

SENATE BILL REPORT

ESB 5013

As Amended by House, April 14, 2009

Title: An act relating to fees collected by county clerks.

Brief Description: Concerning fees collected by county clerks.

Sponsors: Senators Hargrove, Brandland, Fraser, Hatfield and Parlette.

Brief History:

Committee Activity: Judiciary: 1/16/09, 2/04/09 [DPS, w/oRec].

Passed Senate: 3/03/09, 47-0.

Passed House: 4/14/09, 63-34.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5013 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Regala, Vice Chair; McCaslin, Ranking Minority Member; Hargrove, Kohl-Welles and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senators Carrell and Roach.

Staff: Kim Johnson (786-7472)

Background: The county clerk is an elected official and is the administrative and financial officer of the superior court. Many superior courts now have the ability to provide some services and documents electronically.

The fee for the issuance of a certificate of qualification and certified copies of letters of administration, testamentary, or guardianship is \$2. The fee for clerk services such as processing ex parte orders, performing historical searches, and compiling statistical reports may not exceed \$20. A service fee of \$3 is collected for receipt of the first page of a faxed document. These fees are not subject to division with the state.

County clerks are authorized to assess a monthly or annual fee for the cost of collections of unpaid legal financial obligations. The fee may not exceed the actual cost of collections. This fee is not subject to division with the state.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Currently, a fee is not collected by the clerk when a party files a creditor's claim in a probate proceeding.

Summary of Engrossed Bill: The fee for issuance of a certificate of qualification and certified copies of letters of administration, testamentary, or guardianship is raised from \$2 to \$5. The cap on the fee for clerk services such as processing ex parte orders, performing historical searches, and compiling statistical reports is raised from \$20 to \$30. Additionally, the authority of a county clerk to impose the full fee for clerk services for a portion of an hour is removed. The service fee for receipt of the first page of a faxed document is raised from \$3 to \$5.

The filing fee for a party filing a creditor's claim is \$100. The Department of Health and Social Services is exempted from the creditor's claim fee when filing a claim under 43.20b RCW.

The assessment county clerks currently collect for legal financial obligations is codified in the statute that governs clerk service fees and is set at \$100 per year.

Appropriation: None.

Fiscal Note: Requested on January 8, 2009.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is mostly a clean-up bill that addresses fees that were not raised in the big court fee bill that went through in 2005. This bill only contains one fee that is “new,” and we have found that it has been collected in most other states. Regarding the Legal Financial Obligations (LFO) fee, it is not new, we are simply moving the fee into our fee chapter, so that all of the clerk fees are in one chapter and will hopefully be easier for the public to use. Most of the fees being raised have not been changed since the 1970s.

CON: We only oppose the LFO fee. We understand that the clerks are already authorized to collect a fee for LFO collections; however, they are changing the language by setting an amount. Additionally, we would like to revisit the authority of the clerk to collect the fee at all given that the majority of criminal defendants are indigent. We do not believe that it is good public policy to require the poorest members of our society that are already being charged court fees and other fees/fines/charges related to their crime. Layering yet another fee simply adds yet another barrier to these persons' re-entry into society.

The way that the King County Clerk's Office is implementing the hourly fee for clerk services is not within what was intended by the Legislature. If the work for a particular document takes 20 minutes in one hour and then 20 minutes in the next hour, the Clerk's Office charges the fee for 2 hours worth of work, when in reality they actually only worked

on the document for less than one hour. A simple word change in the statute can prevent this from happening.

Family law litigants already pay more than any other parties using the court system. The addition of these fees is only adding to that burden. In probate cases, the new fee of \$200 for filing a creditor's claim will essentially price out many small claims because the claim is not more than the \$200 filing fee. We believe a much lower fee would be more appropriate.

Persons Testifying: PRO: Betty Gould, Thurston County Clerk; Barbara Miner, King County Clerk & Clerks Association.

CON: Reneé Alsept, Public Defender's Association & Criminal Defense Lawyers Association; Joseph Puckett, private attorney; Rick Bartholomew, Washington State Bar Association Family Law Section and Board of Governors; Beth McCaw, Washington State Bar Board of Governors and Real Property Probate & Trust Section.

House Amendment(s): The new creditor's claim filing fee is removed. The fee for processing ex parte orders is changed from an hourly fee to a flat fee of \$30. The clerk is authorized to waive all or part of a fee for copying documents or files without a seal if the person is a member of the news media.